

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5034 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NANA RAMA SABLE

Versus

STATE OF GUJARAT & ANR.

Appearance:

MR GIRISH PATEL for the Petitioner

MR HL JANI for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/09/96

ORAL JUDGEMENT

1. The petitioner, an officer of the Sales tax department of the State of Gujarat, filed this writ petition before this Court and prayed for giving directions to the respondent to promote him as Assistant Commissioner of Sales Tax on and from 10th April, 1980 or in the alternative to promote him to the aforesaid post from 8-8-1980 or 22-08-1980 the dates on which last promotions were made to the post of Assistant

Commissioner of Sales Tax. He further prays for all the consequential benefits which follows there from.

2. The petitioner is a schedule tribe. He was appointed as a Sales Tax Officer, Class II, after having selected by the Gujarat Public Service Commission. He joined this post on 10th April, 1978. He was placed on probation for two years. The two years period has come to an end on 10th April, 1980, but no order of confirmation had been made. The petitioner has come up with a case that under the order dated 25th May, 1983, he was confirmed on the post from 10th April, 1980. At the relevant time, the next promotion from the post of Sales Tax Officer, Class II was to the post of Assistant Commissioner of Sales Tax. In the month of August, 1980, four posts were reserved for schedule tribe candidates. In all four candidates, including the petitioner were available from schedule tribe, but as on August, 1980, the petitioner was not confirmed, his case was not considered and three posts from S.T. candidates could be filled in. The next promotions were made on August 16, 1980 and October 15, 1980, but his case was not considered as by that time also, he was not confirmed on the lower post.

3. The reply to the Special Civil Application has been filed and the fact that the petitioner has been confirmed under the order dated 24th May, 1983 from 10th April, 1980 has not been disputed. It is also not in dispute that the promotions have been made in the month of August, 1980 and October 15, 1980. The petitioner's case was not considered as he was not confirmed is also not in dispute. The respondents have come up with a case that the petitioner could not have any chance of promotion as the seniors to him were available for promotion.

4. The learned counsel for the petitioner contended that the petitioner has a right of consideration for promotion which right has been arbitrarily denied to him. It was for the respondents to pass an appropriate order of his confirmation in time, but it has not been done which has resulted in non-consideration of his case for promotion.

5. The petitioner has a right of consideration for promotion and he may be promoted or may not be promoted that is different matter. Alongwith seniors if his case is considered there is every possibility that he may be given promotion also, but merely on the ground that other seniors are promoted, a right of consideration cannot be

taken away. If such a course is adopted, then the respondents will take the premium on their own in action or omission. The petitioner has also challenged the factual averment made by the respondent in the reply that all four posts of the reserved category has been filled in. I do not consider it appropriate to go on all these questions as I am of the opinion that the case of the petitioner has to be considered for promotion.

6. In the result, this Special Civil Application is disposed of with the direction to the respondent no.1 to consider the case of the petitioner for promotion to the post of Assistant Commissioner Sales Tax with reference to the dates, August, 1980 and October, 1980. This exercise should be undertaken within a period of four months from the date of receipt of certified copy of this order. In case the petitioner is found suitable for promotion and post was available at that time, the petitioner shall be entitled for all the consequential benefits which follows there from. In case, the petitioner is not selected, then the respondents will pass a reasoned order and a copy of the same may be sent to the petitioner. Rule is made absolute in the aforesaid terms with no order as to costs.

zgs/-